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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,457	12/31/2001	Michael T. Morman	KCC 4845 (KC# 16,984)	4817
7590 02/02/2005 Senniger, Powers, Leavitt & Roedel One Metropolitan Square, 16th Floor St. Louis, MO 63102			EXAMINER REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 02/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/037,457	Applicant(s) MORMAN ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-47, 50-69, 72 and 74-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-47, 50-69, 72 and 74-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

Drawings

2. The drawings were received on 10-28-04. These drawings are approved by the Examiner.

3. The drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the affixment as claimed in claims 46-47, 67, 69 and 86-87 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional

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replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Contrary to Applicant's remarks the Figures still don't show the claimed structure because Figure 2 shows adhesive 13 as a line rather than a pattern as claimed and only shows it across the line of cross-section not the surface area of the outer surface of the absorbent body as claimed. Therefore, Applicant's arguments are deemed narrower than the claim language and the description on page 30 of the specification.

Description

4. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01. Applicant's remarks with respect to such have been noted. 2) On page 6, lines 15-20, Applicant defines the terminology "affixed" as including both direct and indirect affixing. Therefore, if a first structure is "affixed" to a second structure at all, the entire first structure is "affixed" because its entirety is either directly or indirectly joined to the second structure. Therefore, the first structure is either entirely affixed or not affixed at all as "affixed" is defined. Therefore it is unclear how the absorbent body is "affixed", i.e. secured, along "at least a portion" or "at least in part" as claimed in the claims, specifically 44, 66, and 68, or a specific percentage as claimed in claims 47, 69 and

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86-87. Also note page 31, lines 8 et seq of the description. Therefore, a clear consistent description of “affixed” should be set forth throughout the description and claims.

Appropriate correction is required.

Applicant’s remarks on pages 13-15 have been considered but are deemed not persuasive in that they are narrower than the definition as set forth on page 6 which does not limit the indirect affixment to affixment to a third element. In any case, the remaining surface area of the outer surface of the absorbent body is still “affixed” to the remaining surface area of the inner surface of the chassis because while they are not directly affixed they are affixed via structure therebetween, e.g. the remaining structure of the outer body or chassis, e.g. the outer surface of the absorbent body adjacent the terminal end edge is connected indirectly to the remainder of the article through all the other structure of the body and chassis whether directly “affixed” to the inner surface of the chassis or not.

Claim Rejections - 35 USC § 112

5. Claims 44-47, 50-69, 72 and 74-87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As already discussed supra, due to the definition of “affixed” and like terms on page 6, and the terminology “at least a portion” or “at least in part” in all the claims and the percentages in claims 47, 69 and 86-87, it is unclear what the structure defined by the terminology “affixed” is. Claims 72 and 74-75 are inconsistent with claim 66, i.e. see definition of “extensible” and “elastic” in the specification, i.e. the former is not significantly retractive whereas the latter is.

Claim Language Interpretation

6. The terminology of the claims is interpreted in light of the definitions set forth on pages 3-8. Due to the lack of clarity with regard to the terminology “affixed”, see discussion *supra*, any amount of affixment will be interpreted as meeting the terms of the claims. It is noted that on page 31, direct surface attachment of between about 25% and 95% has not been patentably distinguished, i.e. described as being critical, from direct surface attachment of less than about 95%. With regard to claims 72 and 74-75, due to the lack of clarity, see discussion *supra*, both the cover and liner will be interpreted as being elastic as claimed in claim 66 rather than extensible as claimed in these claims.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 86-87 are rejected under 35 U.S.C. 102(b) as anticipated by Stevens ‘709.

See Figures, i.e. stretchable chassis is 20, see col. 4, lines 15-31, absorbent body is 22, 42, 43, 44, 38 which is affixed at 26, 28, 50 and/or 45, see col. 7, lines 20-25, and the Claim Language Interpretation section *supra*, and the surface 42 thereof lies against the wearer during use, see Figures.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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10. Claims 44-47, 50-54 and 56-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '709 in view of Boland et al '846.

Claim 44: See Figures, stretchable chassis is 20, see col. 4, lines 15-31, an absorbent body narrower than the chassis is 22, 42, 43, 44, 38 which is affixed at 26, 28, 50 and/or 45, see col. 7, lines 20-25 and the Claim Language Interpretation section supra, and the surface 42 thereof lies against the wearer during use, see Figures. It is the Examiner's first position that the reference teaches the chassis is stretchable independent of the absorbent body, see, e.g., col. 7, lines 5-7 and 20-25 and col. 4, lines 32-48. In any case, the Examiner's second position, the Stevens reference teaches all the claimed structure. Claim 44 on the last three lines defines properties, capabilities and function of such claimed structure. Therefore there is sufficient factual basis to conclude such properties, functions and capabilities are also necessarily and inevitably present in the same structure of Stevens. With regard to added requirement of the absorbent body having a maximum width that is less than the minimum width of the chassis, while the specification sets forth the criticality or function of the perimeter of the chassis extending beyond the perimeter of the absorbent body, it does not set forth the criticality of the claimed widths, i.e. the extended perimeter could exist without the claimed widths being present. The Stevens reference teaches a chassis which has a perimeter which extends beyond the perimeter of the absorbent body yet does not clearly include the claimed widths, note Figure 2. The Boland reference also teaches an insert body for absorption beyond which the perimeter of the chassis extends but in which a maximum width is less than the minimum width of the chassis, see Figures, for attachment thereto such that the chassis is stretchable independently thereof, see, e.g., the abstract. To employ the absorbent body as taught by Boland et al on the

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Stevens device would be obvious (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious), In re Siebentritt, 54 CCPA 1083, i.e. the desired function is absorption without restriction of stretchability of chassis.

Claim 45: see col. 1, lines 12-15.

Claim 46: see points 45 in Figures.

Claim 47: see discussion of claim 44 and Claim Language Interpretation section supra.

Claims 50-54: see col. 17, line 10-col. 21, line 6 of Stevens, and thereby Van der Wielen '415 and Morman '802, e.g., col. 27, lines 20-31 of '802, the chassis can be multiple layers of gathered, i.e. extensible, material and elastic material (it is noted that the claims do not limit each of the cover and liner to one layer only), i.e. each of the cover and liner can be a gatherable or extensible layer or an elastic layer or a combination of at least one extensible layer and one elastic layer.

Claims 56-58: see col. 13, lines 42-45 of Stevens.

Claims 59-62: see portions cited with respect to claims 50-54, especially '802 at the paragraph bridging cols. 19-20 and col. 14, line 26-col 16, line 12, and '709 at col. 20, lines 28-64, i.e. the cover can be a polypropylene spunbond gatherable layer laminated with an adhesive or tacky elastic layer of SIS, and col. 13, line 54-col. 17, line 9 of Stevens, i.e. a thermoplastic nonwoven web of multi-block elastomeric copolymers.

Claims 63-65: see liner 42, tissue wrap 43, see col. 7, lines 16-19, and col. 22, line 1, col. 24, line 34 of Stephens and Figure 6A and col. 17, lines 14-42 of Boland et al.

11. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '709 and Boland '846 as applied to claim 50, and further in view of Vogt '638.

Applicant claims the chassis liner being a neck stretched spunbond web which Stevens does not teach. However, see col. 21, lines 62 et seq of Stevens and col. 7, line 54-col. 8, line 5 and col. 8, lines 21-51 of Vogt, i.e. at the very least teaches a resiliently stretchable cover or chassis can be either a stretch-bonded laminate or a laminate in which the inner layer is a neck-stretched spunbond web. Therefore to make the resiliently stretchable stretchbonded laminate of the chassis or cover of Stevens a cover or chassis of a elastic laminate in which the inner layer is a neck stretched spun bond web would be obvious in view of the interchangeability as taught by Vogt.

12. Claims 66-69, 72 and 74-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '709 in view of Vogt '638 and Bishop et al '166.

See discussion of claims in paragraphs 10 and 11, supra. The Stevens device includes all the claimed structure except for a surge layer and its location. (It is noted with regard to claim 84 that the terminology "low stretch" is relative absent claiming of specific dimensions of stretchability and thereby, at least one of the materials of the absorbent body is considered "low stretch material"). See, e.g., col. 3, lines 59-61 of Stevens, i.e. desires prevention of leakage. See also element 78 in the Figures of Vogt which is a surge layer and col. 3, lines 12-36 of Bishop. To employ a surge layer and one in the claimed location as taught by Vogt and Bishop on the Stevens device would be obvious to one of ordinary skill in the art in view of the recognition that such would aid in the prevention of leakage and the desirability of leak prevention by Stevens. With regard to the added requirement of elasticity of the liner and cover,

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see discussion of claim 50 supra and, e.g., Van der Wielen et al '415 at col. 12, lines 12-15, i.e. all the layers of the chassis can be elastic.

Response to Arguments

13. Applicant's arguments have been considered but are either deemed moot in that the issue has not been reraised or is deemed not persuasive for the reasons set forth supra. It is noted again that the claimed range of affixment has not been distinguished from the range of less than 95%. Applicant's attention is also drawn to In re Aller, 103 USPQ 233, i.e. where general conditions are disclosed in the prior art, i.e. movement unrestricted between body and chassis, discovering the optimum or workable ranges involves only routine skill in the art.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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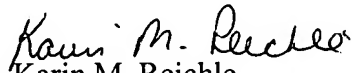
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claim 44, 66 and 86.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
January 26, 2005